



June 30, 2011

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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601 D Street
Washington, D.C. 20044-7611
DJ# 90-5-2-1-08242

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Ariel Rios Building [2242A]
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Regional Administrator
U.S. EPA Region VII
901 North 5th Street
Kansas City, Kansas 66101

Section Chief, Compliance and Enforcement Section
Bureau of Air and Radiation
Kansas Department of Health and Environment
1000 SW Jackson, Suite 310
Topeka, Kansas 66612-1366

RE: *U.S. v. Westar Energy, Inc.*, 09-CV-2059 JAR/DJW
Consent Decree Deviation Report

Dear Sir or Madam:

Pursuant to Paragraph 115, Westar Energy, Inc. (Westar) submits this report identifying a deviation from the above-referenced Consent Decree. On June 16-18, 2011 and June 20-22, 2011, Westar conducted testing in accordance with 40 C.F.R. Part 60, Appendix B, Performance Specification 11 and Appendix F, Procedure 2 at Jeffrey Unit 2 for the purpose of correlating the PM CEMS installed on the Unit as required by the Consent Decree, Paragraph 90. The testing was also conducted to update Westar's Compliance Assurance Monitoring (CAM) plan for Unit 2, as contemplated by Paragraph 83, as a result of the recent ESP rebuild. On testing dates June 17, 18 and 20, 2011, the Unit 2 ESP operated during some time periods without being fully optimized (some TR sets were out), and the FGD also operated at times with some modules out of service.

These changes in the operation of the ESP and FGD were required during correlation and CAM testing to obtain sufficient enough emissions to allow testing over a range of PM levels. Further, appropriate CAM excursion triggers needed to be re-established, also requiring higher PM emissions during testing. Without detuning the control devices, Westar would not have been able to fulfill its obligations under the Consent Decree.

The detuning occurred only during the portions of the testing in which higher PM emissions were needed. *See* Attachment 3 (A table of the times in which the control devices were detuned). Westar took measures to minimize the time periods when the detuning of the control devices occurred to minimize any excess emissions. The deviations were limited only to the specific instances during the testing periods and otherwise Westar kept to a minimum the reduction of the operation of the ESP and FGD. Westar is currently in compliance with provisions of the Consent Decree.

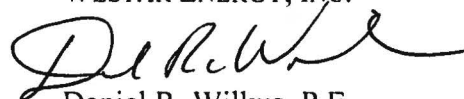
Prior to the testing, Westar submitted a request to EPA on June 2, 2011 seeking permission to detune the ESP and FGD during the testing, consistent with the CAM plan and the EPA-approved PM CEMs Installation Plan. *See* Attachment 1. On June 13, 2011, EPA responded to this request. *See* Attachment 2. EPA acknowledged the need to detune control devices to conduct the testing and that detuning could result in emissions above the emissions limitations set forth in the Consent Decree. EPA also noted that the testing is consistent with the goals of the Consent Decree but did not grant a waiver from any of the Consent Decree requirements. However, EPA granted a waiver from Consent Decree continuous operation and certain emissions requirements for similar testing that Westar performed in 2010. *See* Attachment 4 (Letter from Smith to Wilkus dated June 16, 2010 regarding CAM Testing and Nexus with Consent Decree for the Jeffrey Energy Center). Similar waivers have been granted in other Regions. *See, e.g.,* Attachment 5 (Letter from Dunn to Williamson dated January 7, 2009).

Westar has received preliminary PM emissions results during the testing. The PM emissions levels identified in those results exceeded the emissions limitation in the Consent Decree for Unit 2, although Westar was in compliance with the CD emissions limitation during its annual compliance stack test. The testing addressed in this letter was not performed for PM limitation compliance purposes. Westar will be submitting the final testing report to EPA and KDHE when it becomes available.

Please let me know if you have any further questions at 787-575-1614 or e-mail me at Dan.Wilkus@westarenergy.com.

Sincerely,

WESTAR ENERGY, INC.



Daniel R. Wilkus, P.E.
Director, Air Programs

cc: Mark Smith, USEPA Region 7
Jon Knodel, USEPA Region 7
Mark Elmer, US DOJ
Elizabeth C. Williamson, Winston & Strawn LLP

Attachment 1



June 2, 2011

Mr. Jon Knodel
USEPA Region VII
Mail Code: AWMD/APCO
901 N 5th Street
Kansas City, KS 66101

Re: Westar Energy Consent Decree (Civ. Action No. 09-CV-2059)
Jeffrey Energy Center Units 2 CAM Testing and PM CEMs Certification

Dear Mr. ^{Jon}Knodel:

On March 26, 2010, Westar Energy, Inc. (Westar) entered into a Consent Decree with the United States. Among other requirements for Jeffrey Energy Center (JEC) Units 1, 2 and 3, the Consent Decree includes the specific requirements listed below.

Paragraph 70. No later than ninety (90) days after entry of this Consent Decree, Westar shall commence continuous operation of FGDs at all three JEC Units so as to achieve and thereafter maintain, a 30-Day Rolling Average Unit Removal Efficiency for SO₂ of at least ninety-seven percent (97%) or a 30-Day Rolling Average Unit Emission Rate for SO₂ of no greater than 0.070 lb/mmBTU.

Paragraph 71. No later than ninety (90) days after entry of this Consent Decree and continuously thereafter, Westar shall operate each FGD covered under this Consent Decree at all times that the Unit it serves is in operation, consistent with the technological limitations, manufacturers' specifications, and good engineering and maintenance for the FGD for minimizing emissions to the extent practicable.

Paragraph 82. Beginning thirty (30) days after entry of this Consent Decree, and continuing thereafter, Westar shall operate each ESP and FGD system on each JEC Unit to maximize PM emission reductions at all times when the Unit is in operation. Consistent with the technological limitations, manufacturers' specifications and good engineering and maintenance practices for each control device, Westar shall: (a) energize and maintain power levels to each section of the ESPs; (b) operate an automatic control system on each ESP to assure that the plate-cleaning and discharge-electrode-cleaning systems and associated

performance parameters, including cycle time, cycle frequency, rapper-vibrator intensity, and number of strikes per cleaning event, maximize the overall PM collection efficiency; and (c) inspect and repair any failed ESP sections, openings in control equipment casings, ductwork and expansion joints to minimize air leakage during the next planned Unit outage or unplanned outage of sufficient length.

Paragraph 84. *No later than thirty (30) days from the date of entry of this Consent Decree, Westar shall continuously operate the ESPs and FGD systems at each JEC Unit so that each Unit achieves and maintains a PM Emission Rate of no greater than 0.030 lb/mmBTU as demonstrated by the stack testing required by Paragraph 85.*

Paragraph 88. *No later than December 31, 2011, Westar shall install, correlate, maintain and operate a PM CEMS on one JEC Unit as specified below. The PM CEMS shall comprise a continuous particle mass monitor measuring particulate matter concentration, directly or indirectly, on an hourly basis and a diluent monitor used to convert the concentration to units expressed in lb/mmBTU. The PM CEMS must be appropriate for the anticipated stack conditions and capable of measuring PM concentrations on an hourly average basis. Westar shall maintain, in an electronic database, the hourly average emission values produced by the PM CEMS in lb/mmBTU. Except for periods of monitor malfunction, maintenance, or repair, Westar shall continuously operate the PM CEMS at all times when the Unit is serves is operating.*

In order to provide ongoing reasonable assurance of compliance with the Consent Decree particulate matter (PM) emission limitation, Westar needs to enhance the existing Compliance Assurance Monitoring (CAM) Plan for JEC Unit 2. As you are aware, prior to entering into the Consent Decree, Westar was already required to provide ongoing reasonable assurance of compliance with the New Source Performance Standard (NSPS) Subpart D PM emission limit of 0.10 lb/mmBTU and the State of Kansas PM emission limit of 0.12 lb/mmBtu. Additional CAM testing was conducted for Units 1 and 3 in August 2010 to establish CAM for the Consent Decree PM emission limit. As previously indicated, Westar had planned to rebuild the electrostatic precipitator (ESP) on JEC Unit 2 in early 2011. Therefore on June 16, 2010, USEPA Region 7 (EPA) approved Westar's request to delay JEC Unit 2 CAM testing until the Unit 2 ESP modifications were completed. The JEC Unit 2 ESP modifications are now complete, therefore, Westar must now refine the existing CAM Plan for JEC Unit 2 in order to ensure compliance with the new, 0.030 lb/mmBTU PM emission limit.

In addition, as per Consent Decree paragraph 88, Westar is required to install, correlate, maintain and operate a PM CEMS on one JEC Unit. The PM CEMS has been installed on JEC Unit 2.

Westar is tentatively planning to conduct CAM Plan testing and PM CEMS correlation testing on JEC Unit 2 on June 16 – 24, 2011. A CAM Plan and PM CEMS Test Protocol has been submitted to EPA and the Kansas Department of Health and Environment (KDHE) under a separate cover on May 17, 2011. As you are aware, during the CAM

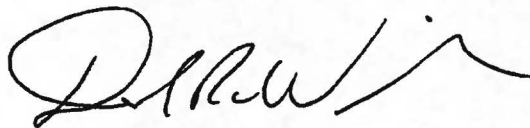
Plan and PM CEMS test program, it will be necessary for Westar to "de-tune" both the ESP and the FGD system for JEC Unit 2. Additionally, during the "de-tuned" ESP and FGD system test conditions, Westar may exceed the SO₂ and/or PM emission limits specified in the Consent Decree as well as the L/G ratio as established in the existing CAM Plan/NSPS Alternative Monitoring Plan. Also at certain times during this testing period, Westar will not be energizing each section of the ESP and will not be operating each ESP and FGD system in order to maximize PM and SO₂ emission reductions.

Westar is requesting that EPA waive the Consent Decree requirements specified in Paragraphs 70, 71, 82 and 84 (and associated Stipulated Penalties) that may be realized as a result of the CAM Plan and PM CEMS correlation testing for JEC Unit 2. Additionally, Westar is requesting EPA and KDHE approval to exceed the L/G ratio limits established by the existing Unit 2 CAM Plan/NSPS Alternative Monitoring Plan. The extent and duration of the ESP and FGD system "de-tuning" as well as any exceedence(s) will be limited to no more time than is absolutely necessary to fulfill the requirements of developing a new enhanced CAM Plan to demonstrate ongoing reasonable assurance of compliance with the Consent Decree PM emission limitation and to conduct the PM CEMS correlation testing.

Should you have any question, please do not hesitate to contact me at 787-575-1614 or e-mail me at Dan.R.Wilkus@westarenergy.com.

Sincerely,

WESTAR ENERGY, INC.

A handwritten signature in black ink, appearing to read "D. Wilkus", with a stylized flourish at the end.

Daniel R. Wilkus, P.E.
Director, Air Programs

cc: Gerald McIntyre, KDHE
Mark Smith, USEPA Region 7

Attachment 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101
JUN 13 2011

Daniel Wilkus
Director, Air Programs
Westar Energy, Inc.
818 S Kansas Avenue
PO Box 889
Topeka, Kansas 66601-0889

RE: CAM Testing for the Jeffrey Energy Center Unit 2

Dear Mr. Wilkus:

On June 2, 2011, we received a request from Westar Energy for relief from Consent Decree paragraphs 70, 71, 82 and 88, and associated stipulated penalties while Westar completes compliance assurance monitoring (CAM) testing for Jeffrey Unit 2. Westar also asks for approval to exceed the liquid to gas ratio limits established in the existing CAM plan while the new testing takes place. The Consent Decree requires Westar to optimize and operate the flue gas desulfurization (FGD) and electrostatic precipitator (ESP) in accordance with good engineering practice to minimize emissions at all times when the unit is in operation. In order to develop the data necessary to demonstrate the conditions under which the PM limits are being met, Westar must temporarily detune the control devices during testing and, therefore, may temporarily emit above the emission limitations set forth in the Consent Decree.

EPA appreciates the advance notice of CAM testing. Because the test program is consistent with the goals of the Consent Decree to reduce PM emissions and improve overall performance of the ESPs, EPA will exercise enforcement discretion related to the testing. If Westar is unable to meet the Consent Decree limits as a result of the pilot testing, EPA requests that Westar describe such circumstances in detail in the 10-day report required by Paragraph 115.

If you have any questions, please contact Jon Knodel of my staff. He can be reached at (913) 551-7622 or knodel.jon@epa.gov.

Sincerely,

Mark Smith,
Chief, Air Permitting and Compliance

cc: Vick Cooper, Kansas Department of Health and Environment



Attachment 3

| Alternative Monitoring Test -- JEC 2 | | | | | |
|--------------------------------------|--------------|------------|-------------------------|------------------|---|
| Run # | Data | Time - CST | ESP T/R Sets in Service | Pumps in Service | |
| 1 | 6/16/11 | 1315-1540 | 72 | 8 | Baseline |
| 2 | 6/16/11 | 1625-1845 | 72 | 8 | Baseline |
| 3 | 6/16/11 | 1910-2124 | 72 | 8 | Baseline |
| 4 | 6/17/11 | 0900-1043 | 54 | 8 | 4 modules w/ 1 full gas path out: B1 - B8 (L&R) |
| 5 | 6/17/11 | 1115-1259 | 54 | 8 | 4 modules w/ 1 full gas path out: B1 - B8 (L&R) |
| 6 | 6/17/11 | 1333-1515 | 54 | 8 | 4 modules w/ 1 full gas path out: B1 - B8 (L&R) |
| 7 | 6/17/11 | 1555-1735 | 60 | 8 | 4 modules w/ 12 TR sets in one path out: B1 - B6 (L&R) |
| 8 | 6/17/11 | 1750-1930 | 60 | 8 | 4 modules w/ 12 TR sets in one path out: B1 - B6 (L&R) |
| 9 | 6/17/11 | 1940-2120 | 60 | 8 | 4 modules w/ 12 TR sets in one path out: B1 - B6 (L&R) |
| 10 | 6/18/11 | 0840-1022 | 60 | 4 | 4 modules, 4 pumps w/ 12 T/R sets in one path out: B1 - B6 (L&R) |
| 11 | 6/18/11 | 1035-1219 | 60 | 4 | 4 modules, 4 pumps w/ 12 T/R sets in one path out: B1 - B6 (L&R) |
| 12 | 6/18/11 | 1230-1413 | 60 | 4 | 4 modules, 4 pumps w/ 12 T/R sets in one path out: B1 - B6 (L&R) |
| 13 | 6/18/11 | 1440-1622 | 60 | 6 | 4 modules, 6 pumps w/ 12 T/R sets in one path out: B1 - B6 (L&R) |
| 14 | 6/18/11 | 1635-1815 | 60 | 6 | 4 modules, 6 pumps w/ 12 T/R sets in one path out: B1 - B6 (L&R) |
| 15 | 6/18/11 | 1826-2009 | 60 | 6 | 4 modules, 6 pumps w/ 12 T/R sets in one path out: B1 - B6 (L&R) |
| 16 | 6/20/11 | 0020-0241 | 72 | 6 | Baseline - Scrubber module 201 was malfunctioning |
| 17 | 6/20/11 | 0300-0444 | 72 | 6 | Baseline - Scrubber module 201 was malfunctioning |
| 18 | 6/20/11 | 0455-0639 | 72 | 7 | Baseline - Scrubber module 201 was malfunctioning |
| 19 | 6/20/11 | 0745-0939 | 26 | 7 | 4 modules w/ front 5 T/R sets (L&R) out of each path+3 other sets |
| 20 | 6/20/11 | 0950-1133 | 26 | 7 | 4 modules w/ front 5 T/R sets (L&R) out of each path+3 other sets |
| 21 | 6/20/11 | 1140-1327 | 26 | 7 | 4 modules w/ front 5 T/R sets (L&R) out of each path+3 other sets |
| 22 | 6/21/11 | 0030-0213 | 72 | 8 | Baseline |
| 23 | 6/21/11 | 0230-0416 | 72 | 8 | Baseline |
| 24 | 6/21/11 | 0435-0617 | 72 | 8 | Baseline |
| 25 | 6/21-22/2011 | 2305-0046 | 72 | 8 | Baseline |
| 26 | 6/22/11 | 0100-0241 | 72 | 8 | Baseline |
| 27 | 6/22/11 | 0250-0450 | 72 | 8 | Baseline |

Attachment 4



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

JUN 16 2010

Daniel Wilkus
Director, Air Programs
Westar Energy, Inc.
818 S Kansas Avenue
PO Box 889
Topeka, Kansas 66601-0889

RE: CAM Testing and Nexus with Consent Decree for the Jeffrey Energy Center

Dear Mr. Wilkus:

On June 6, 2010, we received a request from Westar Energy for relief from Consent Decree paragraphs 70, 71, 81 and 82, and associated stipulated penalties during the time Westar is testing the units to update its compliance assurance plan (CAM). The Consent Decree generally requires Westar to optimize and operate the flue gas desulfurization (FGD) and electrostatic precipitator (ESP) in accordance with good engineering practice to minimize emissions during all periods of time. In order to collect the necessary data and develop the respective curves to demonstrate the conditions under which the PM limits are being met, Westar must temporarily detune the control devices during testing and may temporarily emit above the emission limitations in the Consent Decree.

EPA recognizes that such testing is necessary for the purpose of developing the CAM plan and is likely to improve the performance of the controls over time. EPA also acknowledges that Westar may temporarily operate above the PM and SO₂ limits required by the consent decree during CAM testing. Any excursions that occur during these limited periods will not be considered a violation of the Consent Decree nor subject to stipulated penalties, but should be reported consistent with the terms of the Consent Decree and the Title V semi- and annual compliance certifications.

If you have any questions, please contact Jon Knodel of my staff. He can be reached at (913) 551-7622 or knodel.jon@epa.gov.

Sincerely,

Mark Smith,
Chief, Air Permitting and Compliance

cc: Vick Cooper, KDHE

Attachment 5



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

Telephone (202) 514-1111
Facsimile (202) 616-6583

January 7, 2009

VIA E-MAIL

Liz Williamson, Esq.
Hunton & Williams
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, Virginia 23219-4074

Re: Consent Decree in the matter of U.S. v. East Kentucky Power Cooperative, Civ.
Action No. 04-34-KSF (E.D. Ky.) – PS-11 Certification Testing

Dear Liz:

This letter responds to Jay Holloway's January 2, 2009 letter, which followed up on discussions between East Kentucky Power Cooperative ("EKPC") and EPA on December 16, 2008 concerning EKPC's upcoming PM CEMs calibration and correlation testing for Spurlock Unit 2 pursuant to the requirements of the federal Consent Decree referenced above. To complete that work, EKPC foresees the possibility of temporarily reducing power levels or ceasing the operation of pollution control devices at Spurlock Unit 2. EKPC has explained that the purpose of such actions would be to produce sufficient particulate matter to allow for correlation / calibration of a monitor over a sufficient range of PM emissions. From both your January 2 letter and the statements of company personnel during the December 16, 2008 technical call, we understand that the company's plan is to keep to a minimum any such reductions or cessations and to engage in them only as needed to complete the Decree-required work.

The United States will not object to the measures the Company may take (i.e., reducing or ceasing operation of pollution control devices), so long as the following conditions are met:

- (1) The span level will be established based on the highest PM mass concentration obtained during the test period and extrapolated upward to include the permitted limit of 0.030 lb/mmBtu.
- (2) The reduction of the pollution control capability of pollution control devices at Spurlock Unit 2 are approved only for the purpose described in your letter dated January 2, 2009, and take place only as part of the PM CEMs calibration / correlation work described in that letter.
- (3) EKPC must follow the phased operational protocol identified in Section IV of the attachment to your January 2, 2009 letter.

(4) EKPC must follow the March 24, 2008 PM CEMs Correlation Plan for Spurlock Unit 2, and otherwise keep to a minimum any reduction or cessation in operation of pollution control devices, consistent with the necessary calibration/correlation work.

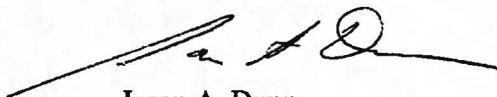
(5) The United States is not taking a position on either: the extent to which it is necessary to reduce or cease operation of pollution control devices to perform this work, or whether the data flowing from such reduction or cessation is material to the correlation/calibration of PM CEMs work that needs to be accomplished as a requirement under the subject consent decree. Issuance of this letter therefore should not be read as an indication that the United States will issue a similar letter in the future. Nor does the United States' agreement to the operational protocol identified in your January 2, 2009 in any way prejudice whether the certification process will, or will not, be successful; depending on the results of the testing, EKPC may need to conduct additional tests to demonstrate compliance with the PM CEMS requirements of the consent decree.

(6) The pollution control device reductions or cessations of operation are to be discontinued as soon as possible, consistent with completing the PM CEMs calibration/correlation work to be undertaken as required by the subject consent decree.

(7) Within twenty-one (21) days of the conclusion of the PM CEMs calibration / correlation effort, EKPC must report to EPA, in writing, on the performance of each calibration/correlation test and its results, including the amounts of particulate matter (PM) emissions resulting from any cessation, bypass, or scaling back of any pollution control device. Good faith estimates are acceptable for PM emissions.

We hope this testing and PM CEMs calibration/correlation takes place as scheduled, and provides useful data. If you have any questions, please feel free to contact David Lloyd of EPA Region 4 in Atlanta (404-562-9216).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason A. Dunn', with a long horizontal line extending to the left.

Jason A. Dunn

cc: David Lloyd, Bob Caplan, Seema Kakade, Dan Bivins